

Preliminary observations by the UN Special Rapporteur on freedom of opinion and expression, Ms Irene Khan, at the end of her visit to the Philippines

Mission program

From January 23 to February 2, 2024, I visited the Philippines at the invitation of the Government of the Republic of the Philippines to examine the state of freedom of opinion and expression in the country. At the outset I would like to express my gratitude to the Under Secretary Paul Guitterez and his team at the Presidential Task Force on Media Security (PTFoMS) for their support and assistance to organize my trip and various governmental meetings.

In addition to the PTFoMS, I met the Presidential Human Rights Committee, the Presidential Communications Office, the Department of Justice, the Department of the Interior and Local Government, the Department of Foreign Affairs, as well as the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) and the Anti-terrorism Council Program Management Center, the National Privacy Commission and the National Commission on Indigenous Peoples, as well as the Philippine Information Agency, the Philippine News Agency and the Philippine Broadcasting System.

I am grateful to everyone who took the time to meet with me, sharing detailed presentations and providing me with information and insights.

I was received at the Supreme Court by the Chief Justice, the Senior Associate Justice and four Associate Justices, representing the Committees of the Court, and was able to hold substantive, constructive discussions. I also met with members of the House of Representatives, including the Chair of the Justice Committee and members of the Human Rights Committee, and had the privilege of being recognized by the Deputy Speaker at the plenary session. I also held substantive meetings with the independent National Commission on Human Rights.

I visited Baguio, Cebu city and Tacloban. I met various local government officials, including the Local Council, prosecutors and judges in Baguio, and Governor Gwendolyn Garcia and senior police officials in Cebu City.

I also thank the United Nations Resident Coordinator and his team, in particular the staff of the Office of the UN High Commissioner for human rights, for their excellent support.

On 31 January, I was honoured to give a lecture at the School of Law at the Ateneo de Manila University.

I met with a wide range of civil society organizations, human rights defenders, journalists and media workers, members of indigenous communities, as well as scholars, youth groups, artists and lawyers in Manila, Baguio, Tacloban and Cebu City. I have been deeply impressed by their commitment, sincerity, courage and resilience to fight for human rights. Many of those I met are young and their passion and devotion to strengthen and improve their society and the lives of their fellow community members is truly inspirational. I am very grateful to them for sharing their hopes, fears, concerns and challenges candidly and concretely. A special thanks goes to those who submitted their contributions in writing before and during my trip.

I have carefully considered all the information I have received and, where possible, have cross-checked and verified using multiple sources. In the course of the consultations, I received a number of well-documented credible complaints, alleging attacks, threats and violations of their human rights, including some unresolved cases of murder of family members, which I will submit to the government for their response, through the regular communications procedure of the Special Procedures.

I want to acknowledge the permission the government gave me to visit three pre-trial detainees in Tacloban prison, Mariel Domequil, Alexander Philip Abinguna, and journalist Frenchie Mae Cumpio, who had turned 25 only a few days before my visit. All three of around the same age have been languishing in prison for the past four years while awaiting the resolution of their cases on non-bailable terrorism related offences. Justice delayed is justice denied, and I trust that my visit will encourage the relevant authorities to either review the cases and dismiss the charges as unfounded, or to speed up the trials with full due process.

In line with the working methods of the Special Procedures of the United Nations Human Rights Council, I am sharing some preliminary observations with the government today. I will submit a full report with detailed recommendations to the Human Rights Council, in June 2025. I hope the fairly long intervening period between now and then will be used by the government to engage further with my mandate, consider my recommendations and take steps to implement them, so that in my final report to the UN Human Rights Council in June 2025, I can reflect those measures as concrete evidence of the government's commitment to address human rights challenges and engage proactively and substantively with the Special Procedures.

Let me begin with an overall observation.

The Administration of President Marcos, Jr. has set a welcome, new tone on many issues that were of concern in the recent past. The decision to reopen the peace talks, the release of former Senator Leila de Lima and the acquittal of Nobel Laureate Maria Ressa on tax evasion charges, are positive signals. In his first statement at the UN General Assembly, President Marcos welcomed the Philippines/United Nations Joint Program on Human Rights as “an example of a constructive approach that puts our people, not our politics, at the centre of this work. It provides a model for revitalizing the structures that facilitate solidarity between the United Nations and a sovereign duty-bearer.”

At the international level, the Administration is seeking a greater leadership role. It chairs the UN Commission on the Status of Women this year and has made a bid for a seat in the Security Council in 2027 – 2028. This Administration has shown a greater willingness than the previous one to engage with the Special Procedures of the United Nations Human Rights Council. It is noteworthy that, while I am only the 10th Special Rapporteur to undertake an official visit to the Philippines in 22 years, I am the third mandate holder to visit the country officially since this Administration came to power.

While these are positive signals, they are not sufficient to turn the page decisively on the past. Tackling the grave and deep-seated human rights problems of the Philippines, many of which are related to my mandate, will require more fundamental and sustained reforms and a clear commitment to accountability. At home and abroad there is an expectation that the government will build on the steps it has already taken to embark on more significant legal, policy and institutional changes. It is only by doing so that it will reaffirm the image of the Philippines as a forward-looking, vibrant democracy, committed to human rights and the rule of law.

Now let me turn to my key findings and recommendations.

Civil society and freedom of expression

Philippines has a vibrant, dynamic civil society and media sector. Over 2,000 private media outlets and more than 60,000 non-government organizations are engaged in advocacy. The State's affirmation of the critical and legitimate role of human rights defenders, journalists and activists in society is essential for creating the safe space they need to work effectively.

I commend the city council of Baguio for its open, inclusive, accountable approach to civil society, based on an ordinance for the protection of human rights defenders. Such legislation is also needed at the national level. I welcome the Human Rights Defenders Bill prepared in the House of Representatives and urge the Executive and the House of Representatives to collaborate to expedite its adoption into law. That would make Philippines the second country in Asia to have such a law, Mongolia being the first.

I am encouraged by the adoption, in June 2023, of Executive Order 31 institutionalizing the Open Government Partnership to enhance participation, information sharing, dialogue and transparency on development and other issues of public interest through a multistakeholder process that includes civil society. I call on the government to examine opportunities for expanding the Open Government Partnership projects to all parts of the country and at all levels of government.

On the negative side, I note with grave concern the threats that civil society actors and many journalists face, especially those critical of state policies and working in advocacy, human rights and social justice issues, particularly in relation to marginalized communities.

During my various meetings with civil society, I heard, again and again, complaints about “red-tagging” or “terror-tagging”: the branding of groups or individuals as supporters, recruiters, and members of the Communist Party of the Philippines-New People's Army (CPP-NPA). A wide range of human rights defenders, humanitarian workers, journalists, community media workers, students, artists, writers, trade unionists, teachers, youth, priests, health workers, and indigenous leaders claim to have been or are being targeted – in effect, these are people who are strongly and openly critical of government policies, who are activists, or who hold progressive views. Many of the victims of such vilification are young, articulate women. Many have pointed their fingers at the state agency, the NTF-ELCAC either as the culprit or the instigator, but also to the military, state security officials, senior government officials, and some media outlets. Sometimes the attacks are online and not clearly identifiable.

The practice is not new. State forces have practiced it for decades and was intensified, online and offline, under the presidency of Rodrigo Duterte, especially with the creation of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC). It has been reported by the National Human Rights Commission and by several reputable international organizations, including OHCHR in 2020 and 2022 and the ILO High Level Mission last year. While the practice was particularly rampant under the previous administration, it remains common also in this administration, though at a lower level.

While the government has reassured me that it does not encourage or endorse it, there is clear evidence that “red tagging” and “terror tagging” as some persons have called them, are being

practised by security forces as part of their counter-terrorism strategy. Furthermore, it is also clear that such vilification is not only aimed at those who are actually associated with proscribed or listed organizations as some officials claim, it is also used to target legitimate activists and activities, sowing distrust between the State, communities and civil society.

The dangers are evident. The vilification has often been followed by threats, unlawful surveillance, attacks, or even unlawful killing. It intimidates and chills freedom of expression, and suppresses legitimate activism, journalism, debate and criticism which are part and parcel of freedom of expression. It isolates and antagonizes those who are unfairly attacked, puts them in a vulnerable position, may even drive them to exploitation by others, and undermines public trust in civil society and the media.

Academic freedom is part of freedom of expression. Teachers and educators pointed out to me that by labelling them as communists or terrorists, their opinions and insights are at the risk of being discredited and dismissed without any consideration of their merit. This has a detrimental effect on the quality of the education system. Students and campus journalists have also complained of pressure from security officials on academic authorities to allow them access to the campus, undermining the autonomy of higher education institutions and impeding student activism, which all interlocutors agreed is a formative aspect of youth.

Vilification is deeply unfair as there is no effective recourse against false accusations. Several individuals and organizations have told me that their complaints, made months and even years ago to the Ombudsperson, the National Human Rights Commission or the Courts, remain unresolved to date.

Critical reporting on state policies, informing the public about the state of the insurgency, documenting or speaking out against human rights violations, working in the community to reduce the economic and social injustices that are sometimes the cause of violent extremism, are legitimate activities both under international and Philippines law. In a democratic society, the State has the obligation to protect people from terrorism, but it must do so within the confines of the rule of law and in line with international human rights standards and obligations, set out clearly in resolutions of the UNGA, SC, HRC.

I have three recommendations to address vilification, aka “red tagging”:

First, the government must make it clear to its officials and the public that it does not encourage, approve or condone “red tagging”. I strongly recommend an Executive Order denouncing the practice and setting out measures that discourage, disincentivise and discipline those who violate the policy. In addition to reassuring civil society and the public, the clear denunciation of “red tagging” will also benefit the upcoming peace talks by encouraging broader participation and more open debate of diverse views to settle differences and reach a consensus.

Second, I was pleased to hear that the National Human Rights Commission has embarked on consultations to help define the problem with a view to proposing legislation to define and prevent it. I encourage the Commission to prioritize the project. Needless to say, the law should be in line with international obligations, including the right to freedom of expression and reparations for victims.

Third, the NTF-ELCAC was established by the previous administration six years ago for a different context. It does not take into account ongoing prospects for peace negotiations.

I therefore recommend that the Task Force be abolished. The abolition will both address some critical drivers of “red tagging” but will also allow this administration to modernize peacebuilding approaches based on a changing political landscape. The abolition will allow for more all-inclusive peace-making platforms, with participation of women peacemakers and communities as a genuine, “whole of nation” approach to peace. It will pay rich dividends as civil society can help to identify and address the root causes and drivers of terrorism, channel discontent into peaceful activism and build trust between the State and its citizens.

Media freedom and safety of journalists and human rights defenders

The killing of journalists is the most egregious form of censorship. The Philippines remains a dangerous country for journalists. According to UNESCO, 117 journalists were killed in the Philippines in the past 30 years, of which 10 cases have been resolved.¹ Clearly, much more needs to be done to eliminate impunity.

Violence against journalists and human rights defenders was particularly high during the Duterte Administration. However, the past eighteen months shows that the trend remains disturbing, with four journalists killed since the new administration took office: Juan Tumpag Jumalon (DJ Johnny Walker), Cresenciano “Cris” Bunduquin, Percival Mabasa (Percy Lapid) and Renato Blanco. One case has been prosecuted and another is in the process of investigation.

The role of the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (AO35 Mechanism) to investigate unsolved cases of political violence is critical. According to government information, as of August 2022, 386 cases were being investigated by the AO35 Mechanism, the majority comprised of unlawful killings. More must be done to produce results.

The Department of Justice has taken some measures to strengthen investigation and prosecution. Circular 13, adopted in February 2023, mandates autopsy for all suspicious or violent deaths. Circular 20 strengthens collaboration between investigators and prosecutors to ensure better evidence collection and higher rates of conviction. The government is setting up a forensic training institute. The Department of Justice has developed a department circular to strengthen cooperation between the National Police and the National Bureau of Investigation to identify perpetrators of threats and violence. Only the concrete figures of impunity will indicate whether these measures are adequate and effective.

In my view the government needs to establish a dedicated special prosecutor for crimes against journalists and human rights defenders.

While impunity is a major deterrent, other protection and prevention measures are also needed to ensure the safety of journalists. The main mechanism for the safety of journalists is the Presidential Taskforce for Media Security (PTFOMS), with the mandate to coordinate various government entities, including the Department of Justice and media representatives. However, there does not seem to be sufficient institutional capacity, proper systems or a clear policy

¹ https://www.unesco.org/en/safety-journalists/observatory/grid?f%5B0%5D=countries%3A5311f1cc-7866-5f0f-b785-d93d13646489&f%5B1%5D=dataset_filters%3Ad4a028c7-b988-44c4-9fcd-ef76810a0974#toggle-facets

framework on the protection and safety and prevention of attacks on journalists, to compel all relevant agencies and entities to invest sufficiently in this issue. To give an example, PTFOMS has sought to designate public information officers in police stations as “media security vanguards”. However, when we made a random check at Cebu City Police, they did not seem to be aware of the arrangement, had no rules on how to handle such problems nor had they received appropriate training on media safety. Equally on the side of the media, not all outlets were convinced about the current system. Many journalists see the law enforcement and security officials as the source of threats against them, and thus do not trust them as “protectors”.

I recommend that the government consider setting up a fully dedicated, properly resourced well institutionalized mechanism, based on good practices from other countries, appropriate training and stronger coordination with police, the media and other actors.

Media freedom and the right to information

The current administration appears to be more amiable toward the press than the previous one. However, the damage caused by the previous administration has resulted into reduced media pluralism and decreased public trust in independent journalism as a result of viral disinformation and troll campaigns. Aside from killings and the libel cases brought up by national or local authorities against critical journalists, the non-renewal of the franchise of ABS-CBN, one of the country’s largest broadcast television and radio network in the country, in 2020, was a blow to media freedom. While ABS-CBN continues to broadcast online and via various agreements, the non-renewal of its franchise continues to adversely affect independent and diverse media and Filipinos’ access to plural information today.

The procedures in the Philippines to form a broadcast media outlet are cumbersome. I encourage the authorities to look into making it simpler for media professionals to operate. The Philippines should also consider the issue of media ownership monopoly and adopt rules aimed at limiting the disproportionate influence of a single person or entity.

According to data from the government, some 2,123 private media outlets, broken down into 395 AM stations, 1,090 FM stations, 546 TV stations, and around 92 newspaper titles , operate in the country. There is no general law that applies to the media sector as a whole, but the sector benefits from self-regulated arrangements at national and local levels. At the national level, the Philippine Press Council under the Philippine Press Institute (PPI), which covers the newspaper industry, and the Broadcast Standards Authority of the Association of Broadcasters of the Philippines (KBP), which oversees the broadcast industry, set up codes, guidelines and mechanisms to receive complaints. During my visit I have met with the Cebu citizens press council which provides pro bono legal services. While the self-regulated systems are welcome, the authorities should provide more support to these groups to be able to operate effectively, safely and inclusively.

During my visit, I was informed about the blocking of alternative news organizations online owing to their alleged link to terror rebellion. The blocking of websites is a direct form of censorship which requires a high degree of scrutiny. While the government may dislike that some outlets provide alternative narratives that do not follow its own editorial line, it is critical that any decision that restrict the freedom of expression meet the three-part test of legality, necessity and proportionality provided for under international human rights law, and is

authorized by the courts. Unlawful restrictions not only have a detrimental effect on the entities concerned but also on the ability of the public to access pluralistic information.

The challenges that media workers face are also compounded by the precarious nature of the labour sector, aggravated by the steady growth of online news consumption. The Philippines Plan on Action on the Safety of Journalists, developed through multi-stakeholder consultations in partnership with UNESCO, could allow addressing some of these challenges. The Philippine Plan of Action seeks to support conducive working conditions for journalists, and to improve public information, journalism education and research, strengthen safety and protection mechanisms, including in the criminal system, and support integrity and professionalism. I encourage the government to support the efforts of the Commission on human rights that works towards the implementation of the National Plan of Action.

There is also a Media Welfare Bill in Congress. While the initiative is positive, I would recommend broader consultations with the media sector to gauge the likely impact of the Bill particularly to smaller outlets.

Legal reforms

While freedom of expression is protected by the Constitution, some legal provisions are not in line with international standards and good practice and would benefit from reform.

While fully recognizing the imperative to protect the population from terrorist attacks, certain provisions of the Anti-Terrorism Act of 2020 are not aligned with international standards and guidance. The issue was raised by my predecessor with the government. In responses to legal challenges by civil society and legal experts, the Supreme Court affirmed, with some changes, for the law to be constitutional. I remain concerned that the law allows the Anti-Terrorism Council (ATC) to allow arrest of individuals designated as “terrorists” without first obtaining a judicial warrant, contradicting basic due process standards. Judicial oversight is necessary at all phases of the criminal justice system even in terrorism cases. The Act also raises additional concerns regarding expanded surveillance, which is having a chilling effect on the legitimate activities of journalists, human rights defenders, civil society activists, and the enjoyment of the right to freedom of expression more broadly. I intend to review, together with the Special Rapporteur on human rights while countering terrorism, the Rules on the Anti-Terrorism Act published by the Supreme Court in December 2023, and to engage the authorities using our communications procedure.

Another legislation that requires amendment is that that relates to libel. While originally designed to prosecute individuals involved in offences such as cybersquatting, cybersex, and child pornography, the Cybercrime Prevention Act of 2012 has been used to criminalise individuals expressing dissent. The cyber libel in the Cybercrime Prevention Act – which regulates the online space – and articles 353 and 355 of the Penal Code for offline libel – are fundamentally at odds with international standards, in particular the General Comment no. 34 of the Human Rights Committee. Many journalists have faced criminal or cyber libel charges. Several courts in developing countries have called for repeal of criminal libel as a relic of the colonial past, not necessary in modern democratic States. I firmly believe that decriminalizing libel would send a strong signal nationally and internationally of the Philippines’ commitment to accept criticism and debate, even against prominent personalities. Tax payer funds should not be spent to protect private interests.

An important means to restore trust is maximizing transparency and access to information. During my meetings, government officials claimed that the government is often subject to disinformation. The strong antidotes to disinformation are robust public information regimes, providing truthful, factual timely information, independent media as fact checkers and media and digital literacy of the public.

Executive Order No. 2 that operationalizes freedom of information provides for overly broad or vaguely framed exemptions. I urge the government to take steps to develop, in consultation with civil society organisations, a law on access to information in line with international human rights standards, which includes maximum disclosure in the public interest. Exemptions from disclosure should be provided clearly in the law, be narrowly defined, and subject to independent oversight. Guarding data privacy is important but should include a public interest exemption. Reviving trust in government decisions and institutions is only possible through access to information, dialogue, listening to grievances, and, most importantly, adherence to human rights and the rule of law.

Finally, a word on international cooperation.

The government deserves praise for its invitation to Special Procedures. I believe a country that is seeking greater engagement internationally should extend a standing invitation to the Special Procedures, following the example of many other States.

At the 75th anniversary in December, the Philippines pledged to release its fourth National Human Rights Action Plan. I hope that protection and promotion of freedom of opinion and expression – the enabler of civil and political and also economic, social and cultural rights will be at the centre of that Plan.

The President of the Philippines himself has praised the Joint Programme for Human Rights. I appreciate the desire of the government to take ownership of the program with a Human Rights Coordinating Council to sustain the current initiatives under the six work streams of the UN Joint Program for Human Rights which will end in 2024. The goal, the government has explained, is to further strengthen the country's human rights and accountability mechanisms. Success will require tough reforms and bringing in civil society as an equal partner – to listen, to respond, to work together to build trust and a shared commitment to address the wide range of human rights concerns. The UN (OHCHR) has played an important role in breaking some barriers between CSOs and government – but there is still a lot of work to be done. I call on the government to draw on the UN's capabilities and technical assistance to continue this work and, as a sovereign duty bearer, invite the UN to join its endeavours as a co-convenor.

Conclusion

The Philippines has the potential to achieve a lot through a few meaningful steps. Changing course is challenging and takes time. However, it can be done with strong political will and clear leadership. I am confident that Philippines will muster the will and I stand ready to support its efforts.